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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,123	07/19/2001	Robert Cahn	2000-0328	1023
7590	04/18/2005		EXAMINER PHAN, TRI H	
Samuel H. Dworetsky AT&T CORP. P.O. Box 4110 Middletown, NJ 07748-4110			ART UNIT 2661	PAPER NUMBER

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/909,123	<b>Applicant(s)</b> CAHN, ROBERT	
	<b>Examiner</b> Tri H. Phan	<b>Art Unit</b> 2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Communications*

1. This Office Action is in response to the communication filed on July 19<sup>th</sup>, 2001. Claims 1-14 are now pending in the application.

### *Claim Objections*

2. Claims 1, 8 and 9 are objected to because of the following informalities:

In claim 1, line 8, “an alternate access connection” should be correct to -- the alternate access connection -- for clarity. Also in claim 1, the method step “reporting the result ...” is missing the destination, which made the claimed limitation is unclear, where the report has to go to.

In claim 8, line 6, “an alternate access connection” should be correct to -- the alternate access connection -- for clarity.

In claim 9, line 3, “a test” should be correct to -- the test -- for clarity. Also in claim 9, line 8, “an alternate access connection” should be correct to -- the alternate access connection -- for clarity.

Appropriate corrections are required.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Wiedeman et al.** (U.S.6,654,347; hereinafter refer as '**Wiedeman**') in view of **Amalfitano et al.** (U.S.5,303,166; hereinafter refer as '**Amalfitano**').

- In regard to claims 1 and 9, **Wiedeman** discloses in Figs. 1-12 and in the respective portions of the specification about the *method for evaluating network access arrangements from the alternate access connection* (For example see Figs. 9-12; col. 9, lines 1-17), *which comprises steps of downloading the test through the network backbone to the network that will produce a virtual private network 'VPN' for the user (system under test 'SUT') to simulate interactions with the VPN and the alternate access connection* (For example see Figs. 1-3, 8-12; col. 5, lines 31-37, 54-57; col. 7, line 63 through col. 8, line 6), *comparing results for the test that could be run on a set of access connections to the backbone from other than the alternate access connection* (For example see Fig. 4B, 8-12; col. 5, line 57 through col. 6, line 11; col. 10, lines 5-28) *and reporting the results of the comparison* (For example see col. 6, lines 56-61). **Wiedeman** does disclose where the test result is used to check ("*comparing results*"; col. 6, lines 2-11) with the DVLAN database, but fails to explicitly disclose about the "*benchmark tests*" to compare with. However, such implementation is known in the art.

For example, **Amalfitano** discloses in Figs. 1-6 and in the respective portions of the specification about the method and system for automated network benchmark performance

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analysis in a multiterminal network (For example see Fig. 1; Abstract; col. 1, lines 8-18) to evaluate the performance of hardwares and softwares with the given configuration (For example see col. 1, lines 60-65); wherein the benchmark scripts are created for selected terminals, software applications, performance parameters for testing (For example see Figs. 4-5; col. 6, lines 4-46; col. 7, lines 35-40) and the results is used for comparing with the terminals or actual selected software application executions ("*comparing results with the benchmark tests*"; For example see Figs. 4-5; col. 5, line 55 through col. 6, line 3). **Amalfitano** also discloses about creating the desired reports with different selected formats, performances parameters, etc. (For example see Fig. 6; col. 8, lines 14-23) by the report generator system (For example see Fig. 4; col. 6, line 67 through col. 7, line 11).

Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention was made to combine the invention as taught by **Amalfitano**, by implement the benchmark test scripts into the **Wiedeman**'s DVLAN server complex, with the motivation being to provide the benchmark tests and compare with the actual test, in evaluating the performance of selected hardwares and softwares in a given configuration disclosed in **Amalfitano**: col. 1, lines 60-65.

- Regarding claims 2 and 10, in addition to features in base claim 1 (see rationales pertaining the rejection of base claim 1 discussed above), **Wiedeman** does disclose about the test for conventional software installation and performance of diagnostics test with customer required configuration (For example see col. 1, lines 38-47; col. 5, lines 12-16), but fails to explicitly disclose about the "*benchmark test*" group. **Amalfitano** further discloses wherein the benchmark

scripts are prepared to emulate multiple selected software applications within the data processing network (For example see col. 6, lines 8-20; col. 7, lines 35-40). Thus, it is obvious that form processing or application transaction performance (For example see Fig. 6; col. 8, lines 14-23) is the member of the “*benchmark test*” group disclosed in the claimed invention.

Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention was made to combine the invention as taught by **Amalfitano**, by implement the benchmark test scripts into the **Wiedeman**’s DVLAN server complex, with the motivation being to provide the benchmark tests, in evaluating the performance of selected hardwares and softwares in a given configuration disclosed in **Amalfitano**: col. 1, lines 60-65.

- In regard to claims 3, 7 and 11, **Wiedeman** does disclose about forwarding the acknowledgment or error message back to the SUT, e.g. “*providing results to customers*”, (For example see col. 6, lines 56-61), but fails to explicitly disclose about the “*results of the comparison*”. **Amalfitano** further discloses about the various reports desired by the user in the performance test with the benchmark scripts with actual selected software application executions (“*results of the comparison*”; For example see col. 6, line 67 through col. 7, line 4) for improving the performance of the system (For example see col. 2, lines 30-44).

Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention was made to combine the invention as taught by **Amalfitano**, by implement the benchmark test scripts into the **Wiedeman**’s DVLAN server complex, with the motivation being to provide the benchmark tests with the desired reports, in evaluating the performance of selected hardwares and softwares in a given configuration disclosed in **Amalfitano**: col. 1, lines 60-65.

- Regarding claims 4 and 12, **Wiedeman** does disclose about the method of “*retesting the VPN*” with different types of test (For example see Fig. 4B; col. 5, lines 54-57; col. 6, lines 34-38), but fails to explicitly disclose about the “*raw throughput data*”. **Amalfitano** further discloses about the various designed reports by the user in the performance test with the benchmark scripts (“*raw throughput data*”; For example see col. 6, line 67 through col. 7, line 27).

Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention was made to combine the invention as taught by **Amalfitano**, by implement the benchmark test scripts into the **Wiedeman**’s DVLAN server complex, with the motivation being to provide the benchmark tests with the desired reports, in evaluating the performance of selected hardwares and softwares in a given configuration disclosed in **Amalfitano**: col. 1, lines 60-65.

- In regard to claims 5-6 and 13-14, **Wiedeman** further discloses about the different types of connection medium between VPNs, such as T1 (“leased lines”; For example see Figs. 9-12) for testing with different types of configuration (For example see col. 5, lines 12-15), but fails to explicitly disclose about the “*modems*”. However, using “*modem*” in dialup for connecting with the network is well known in the art. Therefore, it is obvious to the person of ordinary skill in the art at the time of the invention was made to use the “*modems*” for dialing and making connection with the network as disclosed in the **Wiedeman**’s network.

- Regarding claim 8, **Wiedeman** discloses in Figs. 1-12 and in the respective portions of the specification about the method for improving access to the virtual private network (VPN), which comprises the steps of simulating interactions with the VPN from access by the alternate access connection by downloading the test through the network that will produce the VPN (For example see Figs. 1-3, 8-12; col. 5, lines 31-37, 54-57; col. 7, line 63 through col. 8, line 6) and comparing results for the test that would have connected to the VPN through access connections other than from the alternate access connection (For example see Fig. 4B, 8-12; col. 5, line 57 through col. 6, line 11; col. 10, lines 5-28). **Wiedeman** does disclose where the test result is used to check ("*comparing results*"; col. 6, lines 2-11) with the DVLAN database, but fails to explicitly disclose about the "*benchmark tests*" to compare with and "*adjusting access to the VPN as the result of the comparisons made*". However, such implementation is known in the art.

For example, **Amalfitano** discloses in Figs. 1-6 and in the respective portions of the specification about the method and system for automated network benchmark performance analysis in a multiterminal network (For example see Fig. 1; Abstract; col. 1, lines 8-18) to evaluate the performance of hardwares and softwares with the given configuration (For example see col. 1, lines 60-65); wherein the benchmark scripts are created for selected terminals, software applications, performance parameters for testing (For example see Figs. 4-5; col. 6, lines 4-46; col. 7, lines 35-40) and the results is used for comparing with the terminals or actual selected software application executions ("*comparing results with the benchmark tests*"; For example see Figs. 4-5; col. 5, line 55 through col. 6, line 3) in performance of the selected operations characteristic for the representative transactions ("*adjusting access to the VPN as the result of the comparisons made*"; For example see Abstract; col. 2, lines 30-44).



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Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention was made to combine the invention as taught by **Amalfitano**, by implement the benchmark test scripts into the **Wiedeman**'s DVLAN server complex, with the motivation being to provide the benchmark tests and compare with the actual test, in evaluating the performance of selected hardwares and softwares in a given configuration disclosed in **Amalfitano**: col. 1, lines 60-65.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**DeFerranti et al.** (U.S.2003/0191841), **McKeown et al.** (U.S.2004/0261116) and **Hoffman et al.** (U.S.2003/0018513) are all cited to show devices and methods for improving the facilitating connection by user to the selected network in the communication architectures, which are considered pertinent to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri H. Phan, whose telephone number is (571) 272-3074. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on (571) 272-3126.

**Any response to this action should be mailed to:**

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**Commissioner of Patents and Trademarks**

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**or faxed to:**

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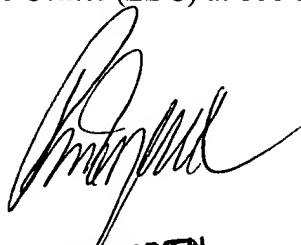
Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,  
Arlington, VA, Sixth Floor.

Any inquiry of a general nature or relating to the status of this application or proceeding  
should be directed to the Technology Center 2600 Customer Service Office, whose telephone  
number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent  
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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tri H. Phan  
April 15, 2005



**BRIAN NGUYEN**  
**PRIMARY EXAMINER**